

INTEREST DEDUCTIONS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies the Corporate and Franchise Income Tax Act and the Individual Income Tax Act by amending provisions relating to additions and deductions for certain business interest.

Highlighted Provisions:

This bill:

- ▶ enacts a subtraction to unadjusted income of a corporate taxpayer, adjusted gross income of an individual income taxpayer, and unadjusted income of a resident or nonresident estate or trust for the amount of any business interest to the extent the amount is not allowed as a deduction on a federal income tax return for the taxable year;
- ▶ enacts an addition to unadjusted income of a corporate taxpayer, adjusted gross income of an individual income taxpayer, and unadjusted income of a resident or nonresident estate or trust for the amount of any business interest that has been deducted on a Utah tax return to the extent the amount is carried forward to a succeeding taxable year as a deduction on a federal income tax return; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-7-105, as last amended by Laws of Utah 2017, Chapter 389

59-7-106, as last amended by Laws of Utah 2017, Chapter 389

59-10-114, as last amended by Laws of Utah 2018, Chapters 190 and 370

59-10-202, as last amended by Laws of Utah 2018, Chapter 190

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34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **59-7-105** is amended to read:

36 **59-7-105. Additions to unadjusted income.**

37 In computing adjusted income the following amounts shall be added to unadjusted
38 income:

39 (1) interest from bonds, notes, and other evidences of indebtedness issued by any state
40 of the United States, including any agency and instrumentality of a state of the United States;

41 (2) the amount of any deduction taken on a corporation's federal return for taxes paid
42 by a corporation:

43 (a) to Utah for taxes imposed by this chapter; and

44 (b) to another state of the United States, a foreign country, a United States possession,
45 or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or
46 exercising its corporate franchise, including income, franchise, corporate stock and business
47 and occupation taxes;

48 (3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and
49 (2)(a);

50 (4) capital losses that have been deducted on a Utah corporate return in previous years;

51 (5) any deduction on the federal return that has been previously deducted on the Utah
52 return;

53 (6) charitable contributions, to the extent deducted on the federal return when
54 determining federal taxable income;

55 (7) the amount of gain or loss determined under Section 59-7-114 relating to a target
56 corporation under Section 338, Internal Revenue Code, unless such gain or loss has already
57 been included in the unadjusted income of the target corporation;

58 (8) the amount of gain or loss determined under Section 59-7-115 relating to
59 corporations treated for federal purposes as having disposed of its assets under Section 336(e),
60 Internal Revenue Code, unless such gain or loss has already been included in the unadjusted
61 income of the target corporation;

62 (9) adjustments to gains, losses, depreciation expense, amortization expense, and
63 similar items due to a difference between basis for federal purposes and basis as computed

under Section 59-7-107;

(10) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a corporation that is an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the corporation that is the account owner:

(a) is not expended for:

(i) higher education costs as defined in Section 53B-8a-102.5; or

(ii) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and

(b) is subtracted by the corporation:

(i) that is the account owner; and

(ii) in accordance with Subsection 59-7-106 (1)(r); ~~and~~

(11) the amount of the deduction for dividends paid, as defined in Section 561, Internal Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in computing the taxable income of a captive real estate investment trust, if that captive real estate investment trust is subject to federal income taxation[-]; and

(12) the amount of any business interest that has been deducted on a return under this chapter, to the extent the amount is carried forward to a succeeding taxable year as a deduction on a federal income tax return under Section 163(j), Internal Revenue Code.

Section 2. Section **59-7-106** is amended to read:

59-7-106. Subtractions from unadjusted income.

(1) In computing adjusted income, the following amounts shall be subtracted from unadjusted income:

(a) the foreign dividend gross-up included in gross income for federal income tax purposes under Section 78, Internal Revenue Code;

(b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct the net capital loss on the return filed under this chapter for the taxable year for which the net capital loss is incurred;

(c) the decrease in salary expense deduction for federal income tax purposes due to claiming the federal work opportunity credit under Section 51, Internal Revenue Code;

(d) the decrease in qualified research and basic research expense deduction for federal income tax purposes due to claiming the federal credit for increasing research activities under Section 41, Internal Revenue Code;

(e) the decrease in qualified clinical testing expense deduction for federal income tax purposes due to claiming the federal credit for clinical testing expenses for certain drugs for rare diseases or conditions under Section 45C, Internal Revenue Code;

(f) any decrease in any expense deduction for federal income tax purposes due to claiming any other federal credit;

(g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and (2)(b);

(h) any income on the federal corporation income tax return that has been previously taxed by Utah;

(i) an amount included in federal taxable income that is due to a refund of a tax, including a franchise tax, an income tax, a corporate stock and business tax, or an occupation tax:

(i) if that tax is imposed for the privilege of:

(A) doing business; or

(B) exercising a corporate franchise;

(ii) if that tax is paid by the corporation to:

(A) Utah;

(B) another state of the United States;

(C) a foreign country;

(D) a United States possession; or

(E) the Commonwealth of Puerto Rico; and

(iii) to the extent that tax was added to unadjusted income under Section 59-7-105;

(j) a charitable contribution, to the extent the charitable contribution is allowed as a subtraction under Section 59-7-109;

(k) subject to Subsection (3), 50% of a dividend considered to be received or received from a subsidiary that:

(i) is a member of the unitary group;

(ii) is organized or incorporated outside of the United States; and

- 126 (iii) is not included in a combined report under Section 59-7-402 or 59-7-403;
- 127 (l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a
- 128 foreign operating company;
- 129 (m) the amount of gain or loss that is included in unadjusted income but not recognized
- 130 for federal purposes on stock sold or exchanged by a member of a selling consolidated group as
- 131 defined in Section 338, Internal Revenue Code, if an election has been made in accordance
- 132 with Section 338(h)(10), Internal Revenue Code;
- 133 (n) the amount of gain or loss that is included in unadjusted income but not recognized
- 134 for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance
- 135 with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal
- 136 Revenue Code, has been made for federal purposes;
- 137 (o) subject to Subsection (5), an adjustment to the following due to a difference
- 138 between basis for federal purposes and basis as computed under Section 59-7-107:
- 139 (i) an amortization expense;
- 140 (ii) a depreciation expense;
- 141 (iii) a gain;
- 142 (iv) a loss; or
- 143 (v) an item similar to Subsections (1)(o)(i) through (iv);
- 144 (p) an interest expense that is not deducted on a federal corporation income tax return
- 145 under Section 265(b) or 291(e), Internal Revenue Code;
- 146 (q) 100% of dividends received from a subsidiary that is an insurance company if that
- 147 subsidiary that is an insurance company is:
- 148 (i) exempt from this chapter under Subsection 59-7-102(1)(c); and
- 149 (ii) under common ownership;
- 150 (r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as
- 151 defined in Section 53B-8a-102, the amount of a qualified investment as defined in Section
- 152 53B-8a-102.5:
- 153 (i) that the corporation or a person other than the corporation makes into an account
- 154 owned by the corporation during the taxable year;
- 155 (ii) to the extent that neither the corporation nor the person other than the corporation
- 156 described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax

return; and

(iii) to the extent the qualified investment does not exceed the maximum amount of the qualified investment that may be subtracted from unadjusted income for a taxable year in accordance with Subsection 53B-8a-106(1);

(s) for a corporation that makes a donation, as that term is defined in Section 53B-8a-201, to the Student Prosperity Savings Program created in Section 53B-8a-202, the amount of the donation to the extent that the corporation did not deduct the donation on a federal income tax return;

(t) for purposes of income included in a combined report under Part 4, Combined Reporting, the entire amount of the dividends a member of a unitary group receives or is considered to receive from a captive real estate investment trust; ~~and~~

(u) the increase in income for federal income tax purposes due to claiming a:

(i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or

(ii) qualified zone academy bond under Section 1397E, Internal Revenue Code[-]; and

(v) the amount of any business interest to the extent the amount is not allowed as a deduction on a federal income tax return for the taxable year under Section 163(j), Internal Revenue Code.

(2) For purposes of Subsection (1)(b):

(a) the subtraction shall be made by claiming the subtraction on a return filed:

(i) under this chapter for the taxable year for which the net capital loss is incurred; and

(ii) by the due date of the return, including extensions; and

(b) a net capital loss for a taxable year shall be:

(i) subtracted for the taxable year for which the net capital loss is incurred; or

(ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue Code.

(3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a taxpayer shall first subtract from a dividend considered to be received or received an expense directly attributable to that dividend.

(b) For purposes of Subsection (3)(a), the amount of an interest expense that is considered to be directly attributable to a dividend is calculated by multiplying the interest expense by a fraction:

(i) the numerator of which is the taxpayer's average investment in the dividend paying subsidiaries; and

(ii) the denominator of which is the taxpayer's average total investment in assets.

(c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in determining income apportionable to this state, a portion of the factors of a foreign subsidiary that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the combined report factors as provided in this Subsection (3)(c).

(ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be included in the combined report factors is calculated by multiplying each factor of the foreign subsidiary by a fraction:

(A) not to exceed 100%; and

(B) (I) the numerator of which is the amount of the dividend paid by the foreign subsidiary that is included in adjusted income; and

(II) the denominator of which is the current year earnings and profits of the foreign subsidiary as determined under the Internal Revenue Code.

(4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under Subsection (1)(l):

(i) if the taxpayer elects to file a worldwide combined report as provided in Section 59-7-403; or

(ii) for the following:

(A) income generated from intangible property; or

(B) a capital gain, dividend, interest, rent, royalty, or other similar item that is generated from an asset held for investment and not from a regular business trading activity.

(b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating company:

(i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

(ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a transaction that occurs between members of a unitary group.

(c) For purposes of the subtraction provided for in Subsection (1)(l), in determining income apportionable to this state, the factors for a foreign operating company shall be

included in the combined report factors in the same percentages as the foreign operating company's adjusted income is included in the combined adjusted income.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes:

(i) income generated from intangible property; or

(ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is generated from an asset held for investment and not from a regular business trading activity.

(5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax credit is claimed if:

(i) there is a reduction in federal basis for a federal tax credit; and

(ii) there is no corresponding tax credit allowed in this state.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes an item similar to Subsections (1)(o)(i) through (iv).

Section 3. Section **59-10-114** is amended to read:

59-10-114. Additions to and subtractions from adjusted gross income of an individual.

(1) There shall be added to adjusted gross income of a resident or nonresident individual:

(a) a lump sum distribution that the taxpayer does not include in adjusted gross income on the taxpayer's federal individual income tax return for the taxable year;

(b) the amount of a child's income calculated under Subsection (4) that:

(i) a parent elects to report on the parent's federal individual income tax return for the taxable year; and

(ii) the parent does not include in adjusted gross income on the parent's federal individual income tax return for the taxable year;

(c) (i) a withdrawal from a medical care savings account and any penalty imposed for the taxable year if:

(A) the resident or nonresident individual does not deduct the amounts on the resident or nonresident individual's federal individual income tax return under Section 220, Internal

250 Revenue Code;

251 (B) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and

252 (C) the withdrawal is subtracted on, or used as the basis for claiming a tax credit on, a

253 return the resident or nonresident individual files under this chapter;

254 (ii) a disbursement required to be added to adjusted gross income in accordance with

255 Subsection 31A-32a-105(3); or

256 (iii) an amount required to be added to adjusted gross income in accordance with

257 Subsection 31A-32a-105(5)(c);

258 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,

259 from the account of a resident or nonresident individual who is an account owner as defined in

260 Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount

261 withdrawn from the account of the resident or nonresident individual who is the account

262 owner:

263 (i) is not expended for:

264 (A) higher education costs as defined in Section 53B-8a-102.5; or

265 (B) a payment or distribution that qualifies as an exception to the additional tax for

266 distributions not used for educational expenses provided in Sections 529(c) and 530(d),

267 Internal Revenue Code; and

268 (ii) is:

269 (A) subtracted by the resident or nonresident individual:

270 (I) who is the account owner; and

271 (II) on the resident or nonresident individual's return filed under this chapter for a

272 taxable year beginning on or before December 31, 2007; or

273 (B) used as the basis for the resident or nonresident individual who is the account

274 owner to claim a tax credit under Section 59-10-1017;

275 (e) except as provided in Subsection (5), for bonds, notes, and other evidences of

276 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other

277 evidences of indebtedness:

278 (i) issued by one or more of the following entities:

279 (A) a state other than this state;

280 (B) the District of Columbia;

281 (C) a political subdivision of a state other than this state; or
282 (D) an agency or instrumentality of an entity described in Subsections (1)(e)(i)(A)
283 through (C); and
284 (ii) to the extent the interest is not included in adjusted gross income on the taxpayer's
285 federal income tax return for the taxable year;
286 (f) subject to Subsection (2)(c), any distribution received by a resident beneficiary of a
287 resident trust of income that was taxed at the trust level for federal tax purposes, but was
288 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(b);
289 (g) any distribution received by a resident beneficiary of a nonresident trust of
290 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
291 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
292 was not taxed at the trust level by any state, with undistributed distributable net income
293 considered to be distributed from the most recently accumulated undistributed distributable net
294 income; ~~and~~
295 (h) any adoption expense:
296 (i) for which a resident or nonresident individual receives reimbursement from another
297 person; and
298 (ii) to the extent to which the resident or nonresident individual subtracts that adoption
299 expense:
300 (A) on a return filed under this chapter for a taxable year beginning on or before
301 December 31, 2007; or
302 (B) from federal taxable income on a federal individual income tax return~~[-]; and~~
303 (i) the amount of any business interest that has been deducted on a return under this
304 chapter, to the extent the amount is carried forward to a succeeding taxable year as a deduction
305 on a federal income tax return under Section 163(j), Internal Revenue Code.
306 (2) There shall be subtracted from adjusted gross income of a resident or nonresident
307 individual:
308 (a) the difference between:
309 (i) the interest or a dividend on an obligation or security of the United States or an
310 authority, commission, instrumentality, or possession of the United States, to the extent that
311 interest or dividend is:

312 (A) included in adjusted gross income for federal income tax purposes for the taxable
313 year; and

314 (B) exempt from state income taxes under the laws of the United States; and

315 (ii) any interest on indebtedness incurred or continued to purchase or carry the
316 obligation or security described in Subsection (2)(a)(i);

317 (b) for taxable years beginning on or after January 1, 2000, if the conditions of
318 Subsection (3)(a) are met, the amount of income derived by a Ute tribal member:

319 (i) during a time period that the Ute tribal member resides on homesteaded land
320 diminished from the Uintah and Ouray Reservation; and

321 (ii) from a source within the Uintah and Ouray Reservation;

322 (c) an amount received by a resident or nonresident individual or distribution received
323 by a resident or nonresident beneficiary of a resident trust:

324 (i) if that amount or distribution constitutes a refund of taxes imposed by:

325 (A) a state; or

326 (B) the District of Columbia; and

327 (ii) to the extent that amount or distribution is included in adjusted gross income for
328 that taxable year on the federal individual income tax return of the resident or nonresident
329 individual or resident or nonresident beneficiary of a resident trust;

330 (d) the amount of a railroad retirement benefit:

331 (i) paid:

332 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
333 seq.;

334 (B) to a resident or nonresident individual; and

335 (C) for the taxable year; and

336 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
337 that resident or nonresident individual's federal individual income tax return for that taxable
338 year;

339 (e) an amount:

340 (i) received by an enrolled member of an American Indian tribe; and

341 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
342 part on that amount in accordance with:

343 (A) federal law;
344 (B) a treaty; or
345 (C) a final decision issued by a court of competent jurisdiction;
346 (f) an amount received:
347 (i) for the interest on a bond, note, or other obligation issued by an entity for which
348 state statute provides an exemption of interest on its bonds from state individual income tax;
349 (ii) by a resident or nonresident individual;
350 (iii) for the taxable year; and
351 (iv) to the extent the amount is included in adjusted gross income on the taxpayer's
352 federal income tax return for the taxable year; ~~and~~
353 (g) the amount of all income, including income apportioned to another state, of a
354 nonmilitary spouse of an active duty military member if:
355 (i) both the nonmilitary spouse and the active duty military member are nonresident
356 individuals;
357 (ii) the active duty military member is stationed in Utah;
358 (iii) the nonmilitary spouse is subject to the residency provisions of 50 U.S.C. Sec.
359 4001(a)(2); and
360 (iv) the income is included in adjusted gross income for federal income tax purposes
361 for the taxable year[-]; and
362 (h) the amount of any business interest to the extent the amount is not allowed as a
363 deduction on a federal income tax return for the taxable year under Section 163(j), Internal
364 Revenue Code.
365 (3) (a) A subtraction for an amount described in Subsection (2)(b) is allowed only if:
366 (i) the taxpayer is a Ute tribal member; and
367 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
368 requirements of this Subsection (3).
369 (b) The agreement described in Subsection (3)(a):
370 (i) may not:
371 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
372 (B) provide a subtraction under this section greater than or different from the
373 subtraction described in Subsection (2)(b); or

374 (C) affect the power of the state to establish rates of taxation; and
375 (ii) shall:
376 (A) provide for the implementation of the subtraction described in Subsection (2)(b);
377 (B) be in writing;
378 (C) be signed by:
379 (I) the governor; and
380 (II) the chair of the Business Committee of the Ute tribe;
381 (D) be conditioned on obtaining any approval required by federal law; and
382 (E) state the effective date of the agreement.

383 (c) (i) The governor shall report to the commission by no later than February 1 of each
384 year regarding whether or not an agreement meeting the requirements of this Subsection (3) is
385 in effect.

386 (ii) If an agreement meeting the requirements of this Subsection (3) is terminated, the
387 subtraction permitted under Subsection (2)(b) is not allowed for taxable years beginning on or
388 after the January 1 following the termination of the agreement.

389 (d) For purposes of Subsection (2)(b) and in accordance with Title 63G, Chapter 3,
390 Utah Administrative Rulemaking Act, the commission may make rules:

391 (i) for determining whether income is derived from a source within the Uintah and
392 Ouray Reservation; and

393 (ii) that are substantially similar to how adjusted gross income derived from Utah
394 sources is determined under Section 59-10-117.

395 (4) (a) For purposes of this Subsection (4), "Form 8814" means:

396 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
397 Interest and Dividends; or

398 (ii) (A) a form designated by the commission in accordance with Subsection
399 (4)(a)(ii)(B) as being substantially similar to 2000 Form 8814 if for purposes of federal
400 individual income taxes the information contained on 2000 Form 8814 is reported on a form
401 other than Form 8814; and

402 (B) for purposes of Subsection (4)(a)(ii)(A) and in accordance with Title 63G, Chapter
403 3, Utah Administrative Rulemaking Act, the commission may make rules designating a form as
404 being substantially similar to 2000 Form 8814 if for purposes of federal individual income

taxes the information contained on 2000 Form 8814 is reported on a form other than Form 8814.

(b) The amount of a child's income added to adjusted gross income under Subsection (1)(b) is equal to the difference between:

(i) the lesser of:

(A) the base amount specified on Form 8814; and

(B) the sum of the following reported on Form 8814:

(I) the child's taxable interest;

(II) the child's ordinary dividends; and

(III) the child's capital gain distributions; and

(ii) the amount not taxed that is specified on Form 8814.

(5) Notwithstanding Subsection (1)(e), interest from bonds, notes, and other evidences of indebtedness issued by an entity described in Subsections (1)(e)(i)(A) through (D) may not be added to adjusted gross income of a resident or nonresident individual if, as annually determined by the commission:

(a) for an entity described in Subsection (1)(e)(i)(A) or (B), the entity and all of the political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

(b) for an entity described in Subsection (1)(e)(i)(C) or (D), the following do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state:

(i) the entity; or

(ii) (A) the state in which the entity is located; or

(B) the District of Columbia, if the entity is located within the District of Columbia.

Section 4. Section **59-10-202** is amended to read:

59-10-202. Additions to and subtractions from unadjusted income of a resident or nonresident estate or trust.

(1) There shall be added to unadjusted income of a resident or nonresident estate or trust:

(a) a lump sum distribution allowable as a deduction under Section 402(d)(3), Internal Revenue Code, to the extent deductible under Section 62(a)(8), Internal Revenue Code, in

436 determining adjusted gross income;

437 (b) except as provided in Subsection (3), for bonds, notes, and other evidences of

438 indebtedness acquired on or after January 1, 2003, the interest from bonds, notes, and other

439 evidences of indebtedness:

440 (i) issued by one or more of the following entities:

441 (A) a state other than this state;

442 (B) the District of Columbia;

443 (C) a political subdivision of a state other than this state; or

444 (D) an agency or instrumentality of an entity described in Subsections (1)(b)(i)(A)

445 through (C); and

446 (ii) to the extent the interest is not included in federal taxable income on the taxpayer's

447 federal income tax return for the taxable year;

448 (c) any portion of federal taxable income for a taxable year if that federal taxable

449 income is derived from stock:

450 (i) in an S corporation; and

451 (ii) that is held by an electing small business trust;

452 (d) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan,

453 from the account of a resident or nonresident estate or trust that is an account owner as defined

454 in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount

455 withdrawn from the account of the resident or nonresident estate or trust that is the account

456 owner:

457 (i) is not expended for:

458 (A) higher education costs as defined in Section 53B-8a-102.5; or

459 (B) a payment or distribution that qualifies as an exception to the additional tax for

460 distributions not used for educational expenses provided in Sections 529(c) and 530(d),

461 Internal Revenue Code; and

462 (ii) is:

463 (A) subtracted by the resident or nonresident estate or trust:

464 (I) that is the account owner; and

465 (II) on the resident or nonresident estate's or trust's return filed under this chapter for a

466 taxable year beginning on or before December 31, 2007; or

(B) used as the basis for the resident or nonresident estate or trust that is the account owner to claim a tax credit under Section 59-10-1017; ~~and~~

(e) any fiduciary adjustments required by Section 59-10-210~~[-]~~; and

(f) the amount of any business interest of a resident or nonresident estate or trust that has been deducted on a return under this chapter, to the extent the amount is carried forward to a succeeding taxable year as a deduction on a federal income tax return under Section 163(j), Internal Revenue Code.

(2) There shall be subtracted from unadjusted income of a resident or nonresident estate or trust:

(a) the interest or a dividend on obligations or securities of the United States and its possessions or of any authority, commission, or instrumentality of the United States, to the extent that interest or dividend is included in gross income for federal income tax purposes for the taxable year but exempt from state income taxes under the laws of the United States, but the amount subtracted under this Subsection (2) shall be reduced by any interest on indebtedness incurred or continued to purchase or carry the obligations or securities described in this Subsection (2), and by any expenses incurred in the production of interest or dividend income described in this Subsection (2) to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(b) income of an irrevocable resident trust if:

(i) the income would not be treated as state taxable income derived from Utah sources under Section 59-10-204 if received by a nonresident trust;

(ii) the trust first became a resident trust on or after January 1, 2004;

(iii) no assets of the trust were held, at any time after January 1, 2003, in another resident irrevocable trust created by the same settlor or the spouse of the same settlor;

(iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

(v) the amount subtracted under this Subsection (2)(b) is reduced to the extent the settlor or any other person is treated as an owner of any portion of the trust under Subtitle A, Subchapter J, Subpart E of the Internal Revenue Code; and

(vi) the amount subtracted under this Subsection (2)(b) is reduced by any interest on indebtedness incurred or continued to purchase or carry the assets generating the income described in this Subsection (2)(b), and by any expenses incurred in the production of income

described in this Subsection (2)(b), to the extent that those expenses, including amortizable bond premiums, are deductible in determining federal taxable income;

(c) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or nonresident estate or trust derived from a deceased Ute tribal member:

(i) during a time period that the Ute tribal member resided on homesteaded land diminished from the Uintah and Ouray Reservation; and

(ii) from a source within the Uintah and Ouray Reservation;

(d) any amount:

(i) received by a resident or nonresident estate or trust;

(ii) that constitutes a refund of taxes imposed by:

(A) a state; or

(B) the District of Columbia; and

(iii) to the extent that amount is included in total income on that resident or nonresident estate's or trust's federal tax return for estates and trusts for that taxable year;

(e) the amount of a railroad retirement benefit:

(i) paid:

(A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq.;

(B) to a resident or nonresident estate or trust derived from a deceased resident or nonresident individual; and

(C) for the taxable year; and

(ii) to the extent that railroad retirement benefit is included in total income on that resident or nonresident estate's or trust's federal tax return for estates and trusts;

(f) an amount:

(i) received by a resident or nonresident estate or trust if that amount is derived from a deceased enrolled member of an American Indian tribe; and

(ii) to the extent that the state is not authorized or permitted to impose a tax under this part on that amount in accordance with:

(A) federal law;

(B) a treaty; or

(C) a final decision issued by a court of competent jurisdiction;

(g) the amount that a qualified nongrantor charitable lead trust deducts under Section 642(c), Internal Revenue Code, as a charitable contribution deduction, as allowed on the qualified nongrantor charitable lead trust's federal income tax return for estates and trusts for the taxable year;

(h) any fiduciary adjustments required by Section 59-10-210; ~~and~~

(i) an amount received:

(i) for the interest on a bond, note, or other obligation issued by an entity for which state statute provides an exemption of interest on its bonds from state individual income tax;

(ii) by a resident or nonresident estate or trust;

(iii) for the taxable year; and

(iv) to the extent the amount is included in federal taxable income on the taxpayer's federal income tax return for the taxable year~~[-]; and~~

(j) the amount of any business interest of a resident or nonresident estate or trust to the extent the amount is not allowed as a deduction on a federal income tax return for the taxable year under Section 163(j), Internal Revenue Code.

(3) Notwithstanding Subsection (1)(b), interest from bonds, notes, and other evidences of indebtedness issued by an entity described in Subsections (1)(b)(i)(A) through (D) may not be added to unadjusted income of a resident or nonresident estate or trust if, as annually determined by the commission:

(a) for an entity described in Subsection (1)(b)(i)(A) or (B), the entity and all of the political subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state; or

(b) for an entity described in Subsection (1)(b)(i)(C) or (D), the following do not impose a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this state:

(i) the entity; or

(ii) (A) the state in which the entity is located; or

(B) the District of Columbia, if the entity is located within the District of Columbia.

(4) (a) A subtraction for an amount described in Subsection (2)(c) is allowed only if:

(i) the income is derived from a deceased Ute tribal member; and

(ii) the governor and the Ute tribe execute and maintain an agreement meeting the

560 requirements of this Subsection (4).

561 (b) The agreement described in Subsection (4)(a):

562 (i) may not:

563 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

564 (B) provide a subtraction under this section greater than or different from the

565 subtraction described in Subsection (2)(c); or

566 (C) affect the power of the state to establish rates of taxation; and

567 (ii) shall:

568 (A) provide for the implementation of the subtraction described in Subsection (2)(c);

569 (B) be in writing;

570 (C) be signed by:

571 (I) the governor; and

572 (II) the chair of the Business Committee of the Ute tribe;

573 (D) be conditioned on obtaining any approval required by federal law; and

574 (E) state the effective date of the agreement.

575 (c) (i) The governor shall report to the commission by no later than February 1 of each
576 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
577 in effect.

578 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
579 subtraction permitted under Subsection (2)(c) is not allowed for taxable years beginning on or
580 after the January 1 following the termination of the agreement.

581 (d) For purposes of Subsection (2)(c) and in accordance with Title 63G, Chapter 3,
582 Utah Administrative Rulemaking Act, the commission may make rules:

583 (i) for determining whether income is derived from a source within the Uintah and
584 Ouray Reservation; and

585 (ii) that are substantially similar to how adjusted gross income derived from Utah
586 sources is determined under Section 59-10-117.

587 **Section 5. Retrospective operation.**

588 This bill has retrospective operation for a taxable year beginning on or after January 1,

589 2019.